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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,434	02/28/2002	William L. Tonar	GEN-001323C3	4510
30981	7590	09/08/2008	EXAMINER	
King & Partners, PLC 170 College Avenue SUITE 230 HOLLAND, MI 49423			TOSCANO, ALICIA	
			ART UNIT	PAPER NUMBER
			1796	
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			09/08/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/085,434	<b>Applicant(s)</b> TONAR ET AL.	
	<b>Examiner</b> Alicia M. Toscano	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

1. Currently, Applicant still has a priority date of 6/18/01. Applicant's claim to priority is not granted because it is untimely.
2. As set forth previously, Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant only claims benefit back to application 09/883650, with an effective filing date of 6/18/01. Applicant has not complied with one or more conditions for receiving the benefit of related cases which have earlier filing dates under 35 U.S.C. 119 because though the case links back to the originally filed application 08/278913 (effective filing date 7/22/94), Applicant has not claimed priority to 08/278913 or the intervening applications 09/361923, 08/616967.
3. As set forth previously, the oath/declaration is objected to because it only includes a claim to 08/278913 and does not include a priority claim to the instantly claimed priority of 09/883650, nor any intervening applications.
4. The amendment to the specification dated 6/23/08 is acknowledged
5. See 37 CFR 1.78, the Examiner has no authority to waive or amend the priority since the claim was untimely made. In order to claim benefit of applications beyond that claimed at the time of filing (09/883650) Applicant must file a petition with the appropriate fees.
6. Since the Specification now contains priority claims which are not consistent with that allowed by the application, the specification is newly objected to. This objection will

be maintained until (1) the specification is amended back as originally filed or (2) Applicant corrects the office file.

***Claim Objections***

7. Objection of Claims 3-69 are overcome by amendment.
8. Objection of Claim 51 is overcome by amendment.

***Terminal Disclaimer***

9. Terminal disclaimers have been approved over US 5928572 and US 6248263.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 3-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Tonar (US 5679283).

This rejection is as set forth in the action dated 12/19/07.

Remarks: Applicant argues the priority claims overcome the date of the instant rejection. The Examiner disagrees. The priority claim is not proper for the reasons set forth above and thusly Tonar '283 still qualifies as prior art. As such the rejection stands.

11. Claims 3-53, 54-56, 58-59, 61-62, 64-65 and 67-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Varaprasad (EP 612826 A1).

This rejection is as set forth in the action dated 12/19/07.

Remarks:

Applicant argues the clauses therein set forth affirmative, positive limitations, which are permissible and pertinent and that the clauses were requested by Examiner Tucker and deemed allowable.

The Examiner disagrees. The clauses therein are product by process limitations. The limitations are not given patentable weight unless Applicant can show a different product is formed. The Examiner is not able to find what evidence was given to Examiner Tucker which resulted in the allowability of the claims/clauses over the prior art. Without such the rejection is maintained.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 54, 57, 60, 63, 66 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varaprasad.

This rejection is as set forth in the action dated 12/19/07.

Remarks:

Applicant argues that in light of the arguments set forth above this rejection should be deemed moot. The Examiner disagrees. The above rejection stands for the reasons set forth above, as such this rejection is found proper for the same reasons.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Toscano whose telephone number is (571)272-2451. The examiner can normally be reached on M-F 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMT

/Randy Gulakowski/  
Supervisory Patent Examiner, Art Unit 1796